

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

LEROY OWENS,

Plaintiff,

v.

CIVIL ACTION NO. 5:14-cv-26939

JASON SIMMONS, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

The Plaintiff filed a Bivens action *Complaint* (Document 4) in this matter on October 16, 2014. Therein, the Plaintiff names as Defendants: Inmate Jason Simmons; Warden Joe Coakley; Correctional Officer Romano; and Correctional Officer Frozen. By *Standing Order* (Document 5) entered on October 16, 2014, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.

On October 20, 2014, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 7) wherein it is recommended that this Court dismiss the Plaintiff's Bivens claim against Defendant Simmons, and refer the matter back to the Magistrate Judge for further proceedings on the Plaintiff's Bivens claim against the remaining Defendants. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by November 6,


2014. Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Plaintiff's Bivens claim against Defendant Simmons be **DISMISSED**, and that this matter be **REFERRED** back to the Magistrate Judge for further proceedings on the Plaintiff's Bivens claim against the remaining Defendants.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: November 10, 2014


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA